(D) 83-1904

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BACHE & CO. (LEBANON) S.A.L.,
a Lebanese corporation,

Petitioner,

—against—

ABDALLAH W. TAMARI, LUDWIG W. TAMARI, FARAH TAMARI, co-partners d/b/a WAHBE TAMARI & SONS CO.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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May 21, 1984

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QUESTIONS PRESENTED

1. Are claims under the Commodity Exchange Act which are brought by citizens and residents of a foreign country against a foreign affiliate of a Delaware corporation, concerning alleged misconduct that occurred entirely outside the United States, properly within the subject matter jurisdiction of the federal courts solely because some of the commodity futures transactions at issue were executed on a United States exchange?

2. Did Congress intend to provide a private right of action under the Commodity Exchange Act to citizens and residents of foreign countries who complain of misconduct that occurred entirely outside of the United States?

LIST OF PARTIES TO THE APPEAL IN THE SEVENTH CIRCUIT

The names of all of the parties to the appeal in the Seventh Circuit are provided in the caption to this petiton. Sup. Ct. R. 21.1(b). A list of the parents, subsidiaries and affiliates of Bache Lebanon is annexed hereto as Appendix A pursuant to Rule 28.1.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. ____

BACHE & CO. (LEBANON) S.A.L.,
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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Bache & Co. (Lebanon) S.A.L. ("Bache Lebanon") respectfully requests that a writ of certiorari issue to review the interlocutory order of the United States Court of Appeals for the Seventh Circuit entered on March 30, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals, which has not been officially reported, is annexed as Appendix B. The opinion of the United States District Court for the Northern District of Illinois (Getzendanner, J.), reported as *Tamari* v. *Bache & Co. (Lebanon) S.A.L.*, 547 F. Supp. 309 (N.D. Ill. 1982), is annexed as Appendix C.

BASIS FOR JURISDICTION IN THIS COURT

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). Jurisdiction in the District Court was premised on 28 U.S.C. §§ 1331, 1337 and 1350. After the District Court denied Bache Lebanon's motion for summary judgment or judgment on the pleadings, the Court of Appeals granted permission for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The order of the Court of Appeals, which affirmed the District Court's ruling, was entered on March 30, 1984.

STATUTE INVOLVED

Sections 4b and 4c of the Commodity Exchange Act, as amended in 1968 ("CEA"), 7 U.S.C. §§ 6b and 6c, are annexed as Appendix D. The Commodity Exchange Act of 1974 and the Futures Trading Act of 1982, which amended the CEA, are not applicable to this case because the disputes at issue arose before the passage of the amendments. In any event, the 1974 and 1982 amendments would not affect the questions posed by this petition.

STATEMENT OF THE CASE

Respondents Abdallah Tamari, Ludwig Tamari and Farah Tamari ("the Tamaris") are citizens and residents of Lebanon. In 1972, the Tamaris opened two commodity futures accounts with Bache & Co., Inc., a Delaware corporation ("Bache Delaware"), through Bache Lebanon, a Lebanese corporation with its sole office in Beirut. Bache Lebanon, a wholly-owned subsidiary of Bache Delaware, acted as Bache Delaware's agent in Lebanon in connection with the Tamaris' account and, as the Court of Appeals said, "all communications and meetings between Bache Lebanon and the Tamaris regarding the commodity futures contracts traded in the United States took place in Lebanon." (App. B at A-7)

A. Prior Litigation Between the Parties

Since 1975 the Tamaris have filed four lawsuits relating to the disputes at issue in this case. In addition, Bache Delaware and the Tamaris arbitrated their disputes before an arbitration panel of the Chicago Board of Trade.

The Tamaris filed this action in 1975 against both Bache Delaware and Bache Lebanon. The Tamaris alleged common law fraud, negligence, breach of fiduciary duty and violations of sections 4b and 4c of the CEA, 7 U.S.C. §§ 6b and 6c, claiming, *inter alia,* that Bache Delaware and Bache Lebanon had churned their accounts, made false representations to them and deceived them as to the status of their accounts.

In 1976, the District Court dismissed the complaint against Bache Delaware and ordered the Tamaris to proceed with an arbitration that had already been commenced before the Chicago Board of Trade and involved the same claims as those alleged in this action.[1] After evidentiary hearings, the arbitrators found in Bache Delaware's favor on its claim against the Tamaris and dismissed all of the Tamaris' counterclaims against Bache Delaware. The arbitration award was confirmed and a judgment entered on the award.[2] Thus, the only entity that conducted any relevant business in the United States with respect to the Tamaris' accounts was found to have acted properly and lawfully.

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1 The Tamaris' counterclaims in the arbitration were virtually identical to their claims in this action.

2 *Tamari* v. *Bache Halsey Stuart, Inc.*, No. 77 C 301 (N.D. Ill. 1979), *aff'd,* 619 F.2d 1196 (7th Cir.), *cert. denied,* 449 U.S. 873 (1980). The Tamaris filed two other lawsuits seeking to stay or overturn the arbitration proceedings on various grounds. The District Court dismissed both of these actions, and the Seventh Circuit affirmed both judgments. *Tamari* v. *Bache & Co. (Lebanon) S.A.L.*, No. 76 C 21 (N.D. Ill. 1976), *aff'd,* 565 F.2d 1194 (7th Cir. 1977), *cert. denied,* 435 U.S. 905 (1978); *Tamari* v. *Conrad,* No. 76 C 2071 (N.D. Ill. 1976), *aff'd,* 552 F.2d 778 (7th Cir. 1977).

B. The Overwhelmingly Foreign Locus of This Case

The only claims remaining in this lawsuit are those asserted by the Tamaris against Bache Lebanon. Thus, the lawsuit has become one brought by foreign citizens against a foreign business, arising out of dealings in a foreign country. It is undisputed that all of the Tamaris' dealings with Bache Lebanon, including all of the alleged misconduct that underlies the Tamaris' complaint, took place in Lebanon, where Bache Lebanon conducted all of its activities. (App. B at A-4, 7; App. C at A-16-7)

When Bache Lebanon received orders from the Tamaris for commodity futures transactions, it transmitted them to Bache Delaware, which relayed the orders to the appropriate exchanges for execution in either England or the United States. (App. C at A-16, 25-6) Bache Delaware gave final acceptance to and processed the Tamaris' orders. (App. B at A-6) Bache Lebanon did not execute any of the Tamaris' orders; it is not registered as a futures commission merchant under the CEA[3] nor is it a member of any exchange in the United States, (App. C at A-16 n.2). Thus, any acts in the United States with respect to the Tamaris' accounts, including acceptance, processing and execution of orders, were done by Bache Delaware, a non-party, and have been found entirely proper by virtue of the arbitration before the Chicago Board of Trade.

C. The Rulings on Subject Matter Jurisdiction

In July 1981, Bache Lebanon moved for judgment on the pleadings or alternatively for summary judgment on the grounds, *inter alia,* that the District Court lacked subject matter jurisdiction over the plaintiffs' claims and that the Tamaris had no private right of action under the CEA. Bache Lebanon argued that Congress did not intend to provide for extraterritorial application of the CEA to a dispute between foreigners concerning alleged misconduct that occurred in a foreign country.

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3 *See* section 4d of the CEA, 7 U.S.C. § 6d.

The District Court, relying on the judicially created "effects" and "conduct" tests of extraterritorial jurisdiction,[4] denied Bache Lebanon's motion, but certified its order for appeal with respect to the issue of subject matter jurisdiction.

The Seventh Circuit granted permission for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b), and affirmed the District Court's ruling, expressly sanctioning the District Court's application of the "conduct" and "effects" tests and adopting the District Court's analysis under those tests. (App. B at A-12)

REASONS FOR GRANTING THE WRIT

The Seventh Circuit now joins the Second Circuit[5] in permitting the extraterritorial application of the CEA to disputes in which the sole nexus to the United States is execution of the customer's order on a domestic exchange. The Second and Seventh Circuits' interpretation of the CEA is contrary to analogous decisions of this Court and results in an impermissible and unwarranted extension of the CEA to disputes that have, at most, an utterly insignificant and incidental impact on United States interests.

The extraterritorial application of the CEA sanctioned by *Tamari* and *Psimenos* extends the law governing extraterritorial application of United States statutes far beyond its already

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4 The "effects" test, as set forth in *Schoenbaum* v. *Firstbrook*, 405 F.2d 200 (2d Cir.), *aff'd as to jurisdiction and rev'd on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied*, 395 U.S. 906 (1969), "focuses on whether conduct occurring outside the United States causes foreseeable and substantial effects within the United States." (App. B at A-7 n.6) The "conduct" test, set forth in *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F.2d 1326 (2d Cir. 1972), "focuses on the significance of conduct within the United States to the accomplishment of illegal activities." (App. B at A-7 n.6)

5 *Psimenos* v. *E.F. Hutton & Co.*, 722 F.2d 1041 (2d Cir. 1983).

generous bounds,[6] and adversely affects every major American brokerage firm with foreign offices or affiliates abroad. Members of the New York Stock Exchange presently have 266 foreign offices or representatives in 31 foreign countries. 1 N.Y.S.E. Guide (CCH) at 671-680 (1984) (annexed as Appendix E). *Tamari* and *Psimenos* bring within the jurisdiction of the federal courts any dispute involving American securities or commodities futures occurring in any of those offices and in any of those countries, even if the dispute is entirely between foreigners and the subject matter of the dispute is alleged misconduct that occurred entirely outside the United States. There is no suggestion in the legislative history of the CEA that Congress intended that the federal courts should be burdened by cases of this sort.

(1)

Initially, the Seventh Circuit correctly held that legislative intent must be considered in determining the scope of jurisdiction under the CEA. (App. B at A-8) The Court relied on Second Circuit precedent for this position, citing the seminal *Bersch* case in which the Second Circuit held that

> "When, as here, a court is confronted with transactions that on any view are predominantly foreign, it must seek to determine whether Congress would have wished the precious resources of United States courts and law enforcement agencies to be devoted to them rather than leave the problem to foreign countries." *Bersch* v. *Drexel Firestone, Inc.*, 519 F.2d 974, 985, *cert. denied*, 423 U.S. 1018 (1975).[7] *See also Fidenas AG* v. *Compagnie Internationale*, 606 F.2d at 10.

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6 Compare *Fidenas AG* v. *Compagnie Internationale Pour l'Informatique CII Honeywell Bull S.A.*, 606 F.2d 5 (2d Cir. 1979); *IIT* v. *Vencap, Ltd.*, 519 F.2d 1001 (2d Cir. 1975).

7 Although *Bersch* is a securities case, courts have applied principles developed in securities cases relating to subject matter jurisdiction to cases arising under the CEA. *See, e.g., Mormels* v. *Girofinance, S.A.*, 544 F. Supp. 815, 817 n.8 (S.D.N.Y. 1982).

The Court of Appeals could not find clear legislative intent to extend the CEA to foreign disputes. (App. B at A-10)

It is well settled that in the absence of clear legislative intent, it must be presumed that Congress did not intend to provide for extraterritorial application of a United States statute to disputes that are predominantly foreign. *See, e.g., Foley Bros., Inc.* v. *Filardo*, 336 U.S. 281, 284-5 (1949); *Blackmer* v. *United States*, 284 U.S. 421, 437 (1932). But the Court below did not end its inquiry with a review of the CEA's legislative history. Instead, it incorrectly assumed that execution of commodity futures transactions on United States exchanges had sufficient impact on United States commerce to justify recourse to the conduct and effects tests, p. 5 n.4, *supra*, to determine whether extraterritorial application would be consistent with the purposes underlying the CEA. (App. B at A-10)

The Seventh Circuit's error in venturing beyond its inquiry into legislative intent was compounded by its extension of extraterritorial application of a United States statute beyond the already generous bounds established in recent cases. Moreover, the Court based this unwarranted extension solely upon a highly questionable presumption of generalized impact on the United States commodities markets. The Court merely stated its own view that "[t]he transmission of commodity futures orders to the United States would be an essential step in the consummation of any scheme to defraud through futures trading on United States exchanges." (App. B at A-12) The Court also speculated that fraudulent activity in connection with commodity futures transactions would affect prices and trading volumes on futures exchanges and could undermine public confidence in the markets. *Id.*

In recent decisions under the federal securities laws, courts have been unwilling to extend application of those statutes to predominantly foreign disputes, even in cases in which there are far more contacts with the United States than exist here. In *Fidenas AG* v. *Compagnie Internationale Pour L'Informatique CII Honeywell Bull S.A.*, 606 F.2d 5 (2d Cir. 1979), foreign

plaintiffs agreed to raise money for defendant Honeywell Bull ("HBS"), a Swiss subsidiary of an American company, by the sale of promissory notes. Pursuant to an underwriting agreement, the plaintiff underwriters sold HBS notes to various customers, including a New York resident. It subsequently was learned that the HBS notes sold by plaintiffs had been forged and HBS refused to honor them.

The plaintiff underwriters sued HBS in federal court for violations of the antifraud provisions of the federal securities laws. Plaintiffs alleged that numerous acts related to the fraud had been committed by the defendants in the United States: the closing of the underwriting in New York City, the transmission of note proceeds through several United States banks, repeated communications between New York and Switzerland and purchases of HBS notes by American customers. The District Court dismissed the complaint and the Court of Appeals affirmed.

Relying on *Bersch*, the Second Circuit concluded that the core of the allegedly fraudulent activity occurred abroad and that the contacts between the alleged fraud and the United States, *including the sale here of the HBS notes*, were not sufficient to constitute fraudulent acts in this country. The Court summarized, "[f]raud there might have been, and plaintiffs may very well have been damaged by its perpetration. . . . [b]ut the dispute here presented is rightfully resolved in the courts of another land." *Fidenas AG* v. *Compagnie Internationale*, 606 F.2d at 10.

In *Mormels* v. *Girofinance S.A.*, 544 F. Supp. 815 (S.D.N.Y. 1982) (Weinfeld, J.), the court dismissed foreign securities claims on similar grounds. The plaintiffs in that case were two German nationals and a former Texan, all residing in Costa Rica, who sued to recover monies allegedly converted by their Costa Rican broker, defendant Girofinance. Also named as a defendant was E.F. Hutton & Co., Inc., a New York investment firm. The complaint alleged violations of the federal securities laws and the CEA.

The crux of the claim against Hutton was that it knew Girofinance was holding itself out as an agent of Hutton, thereby inducing plaintiffs to deposit funds with it for investment. American contacts with the alleged fraud included Girofinance's use of plaintiffs' funds to open an omnibus account with Hutton in the United States for trading, one plaintiff's placement of orders directly with a Hutton branch in the United States and the transmission of various telexes from Girofinance to that Hutton office.

The court found that the American contacts notwithstanding, all false representations were made in Costa Rica. Thus, under *Bersch* and *Fidenas,* no jurisdiction existed because the activity that occurred in the United States was not fraudulent. Judge Weinfeld stated that the American contacts with the transaction, including United States trading, "were 'relatively minor' and of a 'secondary' nature and [did] not detract from the fact that the core of the primary fraud was centered and committed in Costa Rica and not the United States." *Mormels* v. *Girofinance,* 544 F. Supp. at 818.

Similarly, in this case, the execution of the Tamaris' orders on the trading floor of an American exchange was an inconsequential fact in the context of their dispute with Bache Lebanon. Obviously, but for the mechanical act of execution on a United States exchange, the transactions that the Tamaris complain of might not have been consummated. But since the Tamaris do not claim that the mere execution of their transactions on the floor of the exchange was in any way fraudulent, the mechanical act of execution cannot properly be held to create a substantial justification for applying the CEA to the Tamaris' claims. Their claims of fraud and mishandling of their accounts, even if true, do not raise questions of domestic market integrity. They do not allege market or price manipulation. None of their claims, if true, would have any measurable impact on American investors. (*Cf.* App. B at A-12)[8] Thus, the

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8 The volume of the Tamaris' futures trading at Bache was *de minimus.* They claim to have traded 2800 futures contracts over a

(footnote continued on following page)

Tamaris' alleged injuries are unrelated to, and provide no evidence of, the effects presumed by the Seventh Circuit.

An assumption of unparticularized and speculative impact on the United States economy, or on American investors generally, is not sufficient to confer subject matter jurisdiction on the federal courts. *See Bersch* v. *Drexel Firestone,* 519 F.2d at 988. The Seventh Circuit presumed impact even though the record showed none and the Court's presumptions were not sanctioned by anything in the legislative history of the CEA. The Court's recourse to the "conduct" and "effects" tests was erroneous and its analysis of its own speculative assumptions under those tests, which were designed to measure *actual* impact on United States commerce, was incorrect.

(2)

As the Court of Appeals correctly concluded, neither the words of the CEA nor its legislative history suggest Congressional intent to provide for extraterritorial application of the Act to predominantly foreign disputes in which the alleged misconduct occurred outside the United States.

In *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran,* 456 U.S. 353 (1982), this Court held that a private party could maintain an action for damages caused by a violation of the CEA, although Congress had not expressly provided for such

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(footnote continued from preceding page)

thirteen month period in 1972 and 1973. Complaint ¶ 17; Tamaris' Answer to Arbitration Complaint ¶ 12(1). Many of their trades were executed on London commodities exchanges. *See* Tamaris' Answer to Arbitration Complaint ¶ 9. According to figures provided by the Futures Industry Association Inc., the volume of trading in 1972 and 1973 on United States exchanges was 18.3 million and 25.8 million contracts respectively. P. J. Kaufman, *Handbook of Futures Markets* (1984). Even if all of the Tamaris' 2800 contracts were executed on American exchanges, they comprised approximately one one-hundredth of one percent of the annual trading volume during the years relevant to this case.

actions.[9] The *Merrill Lynch* case involved an alleged massive conspiracy to manipulate the potato futures market on the New York Mercantile Exchange. The alleged fraud and manipulation took place in the United States and, assuming the plaintiffs' allegations were true, had a demonstrable impact on domestic investors and the integrity of the domestic potato market. In *Merrill Lynch,* the execution of customers' orders for transactions in commodity futures and physical commodities, and the effect of those executions on prices, were not secondary or minor aspects of the alleged misconduct but went to the heart of the case. On those facts, the implication of a private right of action advanced Congress' purpose in promulgating the CEA to foster orderly and fair markets.

This case is entirely different. Respondents do not allege a conspiracy to manipulate prices on American commodity exchanges. Their trades comprised a minuscule percentage of the total futures contracts traded during the period they maintained their accounts at Bache Lebanon. *See* p. 9 n.8, *supra.* Any alleged misrepresentations or misconduct by Bache Lebanon in Lebanon with respect to the Tamaris' accounts did not and could not undermine the fairness of the United States commodities markets, nor did the mere execution of the Tamaris' orders lie anywhere near the heart of Bache Lebanon's alleged misconduct. To imply a private right of action under the CEA in favor of the Tamaris, or to extend the express right of action in the 1982 Futures Trading Act to disputes with an overwhelmingly foreign locus, would burden the federal courts without any attendant benefit to American investors or the domestic markets.

In an analogous case, *Scherk* v. *Alberto-Culver Co.,* 417 U.S. 506 (1974), this Court held that an arbitration agreement involving extranational transactions was enforceable even though the claims to be asserted in arbitration arose under the

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9 A private right of action was expressly provided for in the 1982 amendments to the CEA. Section 22, Futures Trading Act of 1982, 7 U.S.C. § 25.

Securities Act of 1933. Arbitration agreements involving *domestic* transactions are unenforceable with respect to claims arising under the Act. *Wilko* v. *Swan,* 346 U.S. 427 (1953).

But as the Court said in *Scherk,* in distinguishing domestic and extranational transactions,

> "The invalidation of such an agreement in the case before us would . . . reflect a 'parochial concept that all disputes must be resolved under our laws and in our courts . . . . We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts.' " *Id.* at 519, quoting *The Breman* v. *Zapata Off-Shore Co.,* 407 U.S. 1, 9 (1972).

If foreign citizens trading commodity futures through foreign entities are to be afforded the full protections of the CEA, it should be accomplished by a program of legislation and related treaties under which American citizens would receive similar protections under the laws of foreign nations. The development and coordination of a comprehensive scheme of redress for disputes involving the commodities markets are tasks peculiarly within the legislative province that should await further guidance from Congress. Judicial expansion of CEA jurisdiction by any Court of Appeals in circumstances such as those presented here is plainly improper and should be halted.

(3)

The decision below, together with the Second Circuit's decision in *Psimenos* and the growing internationalization of trading markets,[10] presage a steady flow into the federal courts of disappointed foreign speculators in commodity futures,

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10 The CFTC itself "recognizes the international character of the futures markets which it regulates." *Proposed Duties of Futures Commission Merchants Toward Accounts of Foreign Brokers and Traders,* [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) § 21,028 (CFTC May 14, 1980) at 24,044.

financial futures, options and securities whose essentially foreign claims have as their sole nexus to the United States a mechanical execution on the floor of a United States exchange.[11] The judicial burden will be entirely federal, because the jurisdiction over CEA claims has been exclusively federal since 1983. Section 22(c), Futures Trading Act of 1982, 7 U.S.C. § 25(c).

This Court observed in a *forum non conveniens* case that the American courts have become "extremely attractive to foreign plaintiffs." *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 252 (1981). In rejecting a court of appeals ruling that restricted the application of the *forum non conveniens* doctrine, the Court recognized that under such a ruling, "[t]he flow of litigation into the United States would increase and further congest already crowded courts." *Id.*

The Commodity Futures Trading Commission ("CFTC"), which is charged with the administration of the CEA and regulation of the commodities markets, has announced that it will shed the burden created by the decisions below and in *Psimenos* by dismissing reparations complaints, even if there are sufficient domestic contacts to satisfy the "conduct" or "effects" tests, if adjudication of a reparations complaint would cause substantial inconvenience to the respondent or to the Commission. *CFTC Statement of Policy Concerning the Exercise of Commission Jurisdiction Over Reparations Claims That Involve Extraterritorial Activities of Respondents*, 49 Fed. Reg. 14721 (April 13, 1984).[12]

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11 One such case, *Cresswell* v. *Prudential-Bache Securities Inc.*, 580 F. Supp. 55 (S.D.N.Y. 1984), involving 85 exclusively foreign-based plaintiffs complaining of alleged misrepresentations made to them by foreign-based brokerage firm employees, is now winding its way toward a jury trial of at least three month's duration. By the time of trial there will have been more than 100 depositions.

12 The CFTC has likewise shed a comparable burden by exempting from registration under the CEA account executives whose business is confined to foreign customers:

(footnote continued on following page)

In thus applying a *forum non conveniens* analysis, the CFTC has exercised an option not available to the federal district courts. If, as the Court of Appeals below and the Second Circuit have held, the CEA has extraterritorial application, the district courts have exclusive jurisdiction over foreign claims unless the plaintiff elects a reparation proceeding before the CFTC. Unlike the CFTC in reparations cases, a federal district court may not dismiss on the ground of *forum non conveniens* a federal claim over which it has exclusive jurisdiction. *See* 13 C. Wright & A. Miller, *Federal Practice and Procedure* § 3564 (1975) at 429.

This Court should act now to settle the questions posed by petitioner rather than await the inevitable conflict among the courts of appeals. The questions posed here have critical importance. By the time another court of appeals comes to a different conclusion in another case, the federal courts will have been needlessly burdened and litigants will have needlessly spent millions of dollars in litigation expense because of the inducement to litigation erroneously offered by the Second and Seventh Circuits.

So long as *Bersch* was the seminal decision on the extraterritorial application of federal statutes, there was little need for this Court to speak on the subject. Judge Friendly's decision in *Bersch* was manifestly sound and seemed to be leading the federal courts to results consistent with Congressional intent. The decisions in the present case and in *Psimenos*, however,

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(footnote continued from preceding page)

> "The Commission believes that, given this agency's limited resources, it is appropriate at this time to focus its customer protection activities upon domestic firms and upon firms soliciting or accepting orders from domestic users of the futures markets and that the protection of foreign customers of firms confining their activities to areas outside this country, its territories, and possessions may best be for local authorities in such areas." *CFTC Revision of Registration Regulations; Proposed Rules*, 45 Fed. Reg. 18356 at 18360 (March 20, 1980).

represent an unwarranted and dangerous erosion of this sound federal judicial benchmark and soon will lead to a burden of litigation in the federal courts involving foreign claims and claimants never envisioned by Congress. We respectfully submit that now is the time for this Court to act.

CONCLUSION

For the foregoing reasons, Bache Lebanon respectfully requests that the Court grant a writ of certiorari to review the decision of the Seventh Circuit.

May 21, 1984

Respectfully submitted,

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APPENDIX A

Appendix A

STATEMENT PURSUANT TO SUPREME COURT RULE 28.1

Respondent Bache & Co. (Lebanon) S.A.L. ("Bache Lebanon") is a wholly-owned subsidiary of Prudential-Bache Securities Inc. (formerly Bache & Co., Inc., designated as "Bache Delaware" in the foregoing petition). The following are additional parent companies and affiliates of Bache Lebanon.

The Prudential Insurance Company of America
PRUCO, Inc.
Prudential Capital and Investment Services Inc.
Bache Group Inc.
Prudential-Bache Leasing Inc.
Prudential-Bache Commodity Management Company, Inc.
Bache Securities Inc.
Bache Commodities Ltd.
Bache Guinness Mahon Futures Limited
Prudential-Bache Metal Co. Inc.
Bache Precious Metals, Inc.
Prudential-Bache Energy Corp.
Prudential-Bache Latin America Inc.
Prudential-Bache Southern Europe Inc.
Prudential-Bache Properties, Inc.
Halsey Stuart Corporate Services Limited
Bache Halsey Stuart Shields Holding Corporation
Prudential-Bache Agriculture Inc.
Bache Insurance Agency of Louisiana, Inc.
Bache Insurance Agency of Nevada, Inc.
Prudential-Bache Energy Production Inc.
P-B Finance Ltd.
Prudential-Bache Venture Capital Inc.
Bache Insurance Agency of Arkansas, Inc.
R & D Funding Corp.

Appendix A

Bache Securities Asia Pacific Ltd.
Bache Securities Espana S.A.
Bache Securities (France) S.A.
Bache Insurance Agency, Incorporated
Bache Insurance of Arizona, Inc.
Bache Insurance of Kentucky, Inc.
Bache Securities (Hong Kong) Limited
Bache Securities (Greece) S.A.
Bache Securities (Monaco) Inc.
Prudential-Bache (Pan America) Inc.
Prudential-Bache Puerto Rico Inc.
Bache Securities (Japan) Ltd.
Bache Securities (South America) S.A.
Bache Securities (Argentina) S.A.
Bache Securities (Belgium) Inc.
Bache Securities (Germany) Inc.
Bache Securities (Holland) Inc.
Bache Securities (Switzerland) Inc.
Bache Securities (U.K.) Inc.
Bachfurn Corporation
Shields Model Roland Company (London)
Prudential-Bache Real Estate, Inc.

APPENDIX B

Appendix B

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 83-2452

ABDALLAH W. TAMARI, LUDWIG W. TAMARI, FARAH TAMARI, co-partners d/b/a WAHBE TAMARI & SONS CO.,

Plaintiffs-Appellees,

v.

BACHE & CO. (LEBANON) S.A.L., a Lebanese corporation,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 75 C 4189—Susan Getzendanner, *Judge.*

ARGUED JANUARY 18, 1984—DECIDED MARCH 30, 1984

Before BAUER and FLAUM, *Circuit Judges*, and SWYGERT, *Senior Circuit Judge.*

SWYGERT, *Senior Circuit Judge.* The plaintiffs-appellees ("the Tamaris"), citizens of Lebanon, brought this suit under the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 6b and 6c, for damages resulting from alleged fraud and mismanage-

ment of their commodity futures trading accounts. The defendant-appellant, Bache & Co. (Lebanon) S.A.L. ("Bache Lebanon"), is a Lebanese corporation wholly owned by Bache & Co., Inc., a Delaware corporation ("Bache Delaware"). The issue presented in this interlocutory appeal is whether the district court has subject matter jurisdiction under the CEA over a dispute between nonresident aliens when the trading of commodity futures contracts giving rise to the suit took place on United States exchanges but the contacts between the parties occurred in Lebanon.[1] The district court held that it had subject matter jurisdiction in ruling on Bache Lebanon's motion for judgment on the pleadings, or, in the alternative, for summary judgment. The court later denied Bache Lebanon's motion to reconsider its ruling, but certified for appeal those parts of its order dealing with its subject matter jurisdiction over the case.[2] This court granted permission to

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1 The plaintiffs also stated a claim of common law fraud, asserting jurisdiction under 28 U.S.C. § 1350 and principles of pendent jurisdiction. Both parties appear to assume that this claim would not survive if jurisdiction is lacking under the CEA. We note that 28 U.S.C. § 1350 has been narrowly construed and would not supply a basis for federal jurisdiction over the common law claim. *See ITT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 (2d Cir. 1975). Without a federal claim that could survive a motion to dismiss, the plaintiffs also could not rely upon principles of pendent jurisdiction. *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

2 In its original motion, Bache Lebanon had asserted that it was entitled to judgment for three reasons: (1) the district court lacked subject matter jurisdiction; (2) the claims against it were collaterally estopped by an arbitrator's decision in favor of its parent, Bache Delaware; and (3) the Tamaris had no implied right of action under the Commodity Exchange Act. The district court ruled against Bache Lebanon on all three issues. *Tamari v. Bache & Co. (Lebanon) S.A. L.*, 547 F. Supp. 309 (N.D. Ill. 1982). Bache Lebanon now seeks reversal of the district court only on the ground that subject matter jurisdiction is lacking over the dispute. Although Bache Lebanon also has discussed the issues of res judicata and collateral estoppel in

take an interlocutory appeal pursuant to 28 U.S.C. § 1292(b) on July 20, 1983. For the reasons stated below, we affirm the district court's denial of Bache Lebanon's motion.

I

A. Background of this Suit

When the Tamaris filed this action in December 1975, both Bache Lebanon and its parent, Bache Delaware, were named as defendants. The Tamaris alleged that Bache Lebanon solicited them to open two commodity futures trading accounts, which they did early in 1972. The Tamaris further alleged that in soliciting and trading for their accounts, Bache Lebanon, Bache Delaware, or both, violated the CEA, causing losses to the Tamaris' accounts of more than two million dollars.[3] The alleged violations include excessive trading and churning of the accounts; making false representations, false reports and false statements to the Tamaris; and deceiving the Tamaris as to the true condition of the accounts.

The district court dismissed the action against Bache Delaware on May 19, 1976,[4] because an arbitration proceeding

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support of its position on subject matter jurisdiction, we find it unnecessary to consider these issues in reaching our decision on subject matter jurisdiction. Nor do we rule on whether we have jurisdiction to decide them given the district court's limited certification order. *See Nuclear Engineering Co. v. Scott*, 660 F.2d 241 (7th Cir. 1981), *cert. denied*, 455 U.S. 993 (1982).

3 The parties disagree on the extent of Bache Lebanon's involvement in the solicitation and management of the Tamaris' accounts and on the nature of the agency relationship between Bache Lebanon and Bache Delaware.

4 This court dismissed the Tamaris' appeal of the district court's order dismissing the action against Bache Delaware without prejudice to any further appeal from an appealable order in this case. *Tamari v. Bache & Co. (Lebanon) S.A.L.*, No. 76-1729 (7th Cir. Sept. 23, 1976) (unreported order).

between the Tamaris and Bache Delaware was pending at the time suit was filed. The proceeding was before the Chicago Board of Trade pursuant to an arbitration agreement between the parties. Bache Delaware sought an award of $376,366.96 against the Tamaris for the balance owed in the Tamaris' trading accounts; the Tamaris sought $2,150,000 in damages based on a counterclaim similar to the claims of this lawsuit. Bache Delaware ultimately prevailed in the arbitration proceeding,[5] and successfully defended against the Tamaris' later suit seeking to vacate the arbitration award. *See Tamari v. Bache Halsey Stuart, Inc.*, 619 F.2d 1196 (7th Cir.), *cert. denied*, 449 U.S. 873 (1980). The only action remaining, therefore, is that against Bache Lebanon.

B. Motion for Judgment on the Pleadings

In light of the arbitation decision, Bache Lebanon filed its motion for judgment on the pleadings or summary judgment. The undisputed facts relevant to the question of subject matter jurisdiction raised by the motion can be briefly stated. The plaintiffs are citizens of Lebanon and reside outside the United States. Bache Lebanon, a wholly-owned subsidiary and agent of Bache Delaware, is a Lebanese corporation and has its sole office in Beirut, Lebanon. In the course of trading for the Tamaris' accounts, Bache Lebanon received futures orders from the Tamaris in Lebanon and transmitted them by wire to Bache Delaware for execution on the Chicago Board of Trade and the Chicago Mercantile Exchange. Bache Delaware, a member of both exchanges, then executed the contracts. Although there were daily conversations between the Tamaris,

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5 The Tamaris filed two additional lawsuits seeking to stay the arbitration on various grounds. The district court dismissed both suits, and those dismissals were affirmed by this court. *Tamari v. Bache & Co. (Lebanon) S.A.L.*, No. 76 C 21 (N.D. Ill. May 19, 1976), *aff'd*, 565 F.2d 1194 (7th Cir. 1977), *cert. denied*, 435 U.S. 905 (1978); *Tamari v. Conrad*, No. 76 C 2071 (N.D. Ill. Nov. 15, 1976), *aff'd*, 552 F.2d 778 (7th Cir. 1977).

Bache Lebanon, and Bache Delaware, all communications and meetings between Bache Lebanon and the Tamaris regarding the commodity futures contracts traded in the United States took place in Lebanon.

The district court denied Bache Lebanon's motion, holding that subject matter jurisdiction exists over a cause of action arising from trading on United States exchanges even though the parties are nonresident aliens and the contacts between them occurred in a foreign country. The court reached its decision by applying two doctrines used to analyze jurisdictional questions that arise from transnational disputes—the effects test and the conduct test.[6] Under both tests, the court concluded that jurisdiction exists over this case.

Bache Lebanon now challenges this determination. It first contends that the district court failed to consider whether Congress intended the CEA to apply to nonresident aliens when the alleged illegal acts occurred in a foreign country, and then argues that subject matter jurisdiction is lacking because Congress did not intend such application. Bache Lebanon also contends that subject matter jurisdiction does not exist under either the conduct test or the effects test.

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6 The effects test derives from section 18 of the Restatement (Second) of Foreign Relations Law of the United States (1965), and focuses on whether conduct occurring outside the United States causes foreseeable and substantial effects within the United States. *See Schoenbaum v. Firstbrook*, 405 F.2d 200 (2d Cir.), *rev'd on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied sub nom. Manley v. Schoenbaum*, 395 U.S. 906 (1969). The conduct test derives from section 17 of the Restatement and focuses on the significance of conduct within the United States to the accomplishment of illegal activities. *See Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972); *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2d Cir.), *cert. denied sub nom. Bersch v. Arthur Andersen & Co.*, 423 U.S. 1018 (1975).

II

We agree with Bache Lebanon's contention that legislative intent must be considered. *See, e.g., Psimenos v. E. F. Hutton & Co.*, 722 F.2d 1041, 1044-45 (2d Cir. 1983); *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 985 (2d Cir.), *cert. denied sub nom. Bersch v. Arthur Andersen & Co.*, 423 U.S. 1018 (1975). Subject matter jurisdiction exists over this dispute only if the antifraud provisions of the Commodity Exchange Act were intended to apply to foreign brokers or agents of commodity exchange members whenever they facilitate futures trading on United States exchanges.[7] Looking to the language of the statute and its legislative history, we find no indication, however, that Congress intended to prohibit fraudulent dealings connected with futures trading on domestic exchanges only if the futures transactions originate in the United States.

One of Congress's fundamental purposes in enacting the CEA was to ensure fair practice and honest dealings on commodity exchanges, for the protection of the market itself as well as those who could be injured by unreasonable fluctuations in commodity prices. S. Rep. No. 93-1131, 93d Cong., 2d Sess. 14, *reprinted in* 1974 U.S. Code Cong. & Ad. News 5856. *See also* 7 U.S.C. § 5. To effectuate this purpose, the Act creates a comprehensive regulatory scheme premised on control over domestic stock exchanges and the trading of futures contracts on those exchanges.[8] The specific provisions of the

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7 Jurisdiction over civil actions arising under the CEA is conferred by 28 U.S.C. §§ 1331 and 1337 rather than by any specific provision in the CEA.

8 Congress has authorized the regulation of commodity futures exchanges for over seventy years. In 1922, Congress enacted the Grain Futures Act, 42 Stat. 998, which prohibited any person from dealing in futures contracts off a designated contract market. It further provided that the Secretary of Agriculture could designate a board of trade as a contract market only if the board prevented its members from disseminating misleading market information and

CEA upon which this suit is based broadly proscribe fraudulent commodity futures transactions. Under 7 U.S.C. § 6b, any member of a contract market, or its agents, is prohibited from defrauding any person in connection with the making of a futures contract on any contract market.[9] Under 7 U.S.C. § 6c, it is unlawful for any person to enter into or confirm the execution of a meretricious commodity futures transaction.

We recognize that the Act does not expressly state that the term "agent" includes, or excludes, agents doing business in foreign countries, or that "person" includes, or excludes, nonresident aliens. *See* 7 U.S.C. § 2. Nor does the legislative history provide any guidance on whether these provisions should be applied to all agents of commodity exchange members, regardless of their location. In support of their respective positions, the parties and the Commodity Futures Trading Commission, as *amicus curiae*, have referred to congressional reports on the 1974 and 1982 amendments to the CEA, and to subsequent regulations promulgated by the Commission.[10]

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prevented price manipulation. Though the regulatory scheme has become more expansive and complex, these basic provisions are still included in the Commodity Exchange Act. *See* 7 U.S.C. §§ 6 and 7.

9 The Commodity Futures Trading Commission designates a board of trade as a "contract market" when it complies with and carries out certain conditions and requirements. 7 U.S.C. § 7.

10 *See* H.R. No. 93-975, 93d Cong., 2d Sess. 61-64 (1974) (discussing expansion of the CEA's coverages to include world commodities); 17 C.F.R. §§ 17.00 and 21.02 (1983) (requiring foreign brokers and foreign traders to comply with Commission reporting provisions and "special calls" for information on their market positions); 17 C.F.R. § 30.02 (1983) (proscribing fraud in connection with futures transactions other than on domestic contract markets); 45 Fed. Reg. 18360 (March 20, 1980) and 17 C.F.R. § 3.12 (1983) (rescinding registration requirement for foreign associated persons of domestic firms). *See also* H.R. Rep. No. 97-565, 97th Cong., 2d Sess. 68, *reprinted in* 1982 U.S. Code Cong. & Ad. News 3917 (discussion relating to 17 C.F.R. §§ 17.00 and 21.02).

Bache Lebanon attaches particular significance to the Commission's decision to exclude foreign associated persons of domestic firms from registration requirements. However, we do not regard this decision as an indication of congressional intent on the jurisdictional limits of the antifraud provisions, especially when the Commission has taken the position that the CEA confers subject matter jurisdiction over this dispute. Likewise, the other references illustrate specific legislative and administrative responses to increased international trading in commodity futures, but do not address the intended jurisdictional scope of the antifraud provisions of the Act.

Finding nothing in the Act or its legislative history to indicate that Congress did not intend the CEA to apply to foreign agents, but recognizing there also is no direct evidence that Congress intended such application, we believe it is appropriate to rely on the "conduct" and "effects" tests in discerning whether subject matter jurisdiction exists over this dispute.[11]

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11 As a matter of foreign relations law, the conduct and effects principles indicate whether the United States has jurisdiction to prescribe a rule that attaches legal consequences to conduct occurring in the United States, or to conduct occurring outside the United States that causes effects within the United States. *See* Restatement (Second) of Foreign Relations Law of the United States §§ 17 and 18 (1965). Were Congress to enact a rule beyond the scope of these principles, the statute could be challenged as violating the due process clause on the ground that Congress lacked the power to prescribe the rule. *See Blackmer v. United States*, 284 U.S. 421, 436 (1931); *Leasco, supra*, 468 F.2d at 1334.

When the question instead is whether Congress intended a statute to have extraterritorial application, the analysis of legislative intent becomes intertwined with these principles of foreign relations law. If extraterritorial application would have no impact on domestic conditions, it is presumed that Congress did not intend the statute to apply outside the territory, unless a contrary intent appears. *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949). Reliance on this presumption is misplaced, however, when the conduct under scrutiny has not occurred wholly outside the United States, or when conduct outside the United States could otherwise affect domestic conditions. *Leasco,*

Both tests were developed in cases brought under the antifraud provisions of the federal securities laws and have recently been applied in similar cases arising under the Commodity Exchange Act. *See, e.g., Psimenos, supra*, 722 F.2d at 1044-48 (CEA); *Grunenthal GmbH v. Hotz*, 712 F.2d 421 (9th Cir. 1983); *SEC v. Kasser*, 548 F.2d 109 (3d Cir.), *cert. denied sub nom. Churchill Forest Industries (Manitoba), Ltd. v. SEC*, 431 U.S. 938 (1977); *Bersch, supra*, 519 F.2d 985-93; *ITT v. Vencap, Ltd.*, 519 F.2d 1001, 1015-19 (2d Cir. 1975); *Leasco, supra*, 468 F.2d at 1333-39; *Schoenbaum, supra*, 405 F.2d at 206-08; *Alemano v. ACLI International, Inc.*, 2 Comm. Fut. L. Rep. (CCH) ¶ 21,898 at 27,894 (S.D.N.Y. Nov. 2, 1983) (CEA); *Mormels v. Girofinance, S.A.*, 544 F. Supp. 815 (S.D.N.Y. 1982) (CEA). The conduct test focuses on the foreigner's conduct within the United States as it relates to the alleged scheme to defraud. *See, e.g., Grunenthal, supra*, 712 F.2d at 423-26; *Kasser, supra*, 548 F.2d at 112-16; *Travis v. Anthes Imperial Ltd.*, 473 F.2d 515, 523-28 (8th Cir. 1973); *Bersch, supra*, 519 F.2d at 987. When the conduct occurring in the United States is material to the successful completion of the alleged scheme, jurisdiction is asserted based on the theory that Congress would not have intended the United States to be used as a base for effectuating the fraudulent conduct of foreign companies. *See Psimenos, supra*, 722 F.2d at 1046; *Kasser, supra*, 548 F.2d at 116. *See also Vencap, supra*, 519 F.2d at 1017. Under the effects test, courts have looked to whether conduct occurring in foreign countries had caused foreseeable

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supra, 468 F.2d at 1334; *Schoenbaum, supra*, 405 F.2d at 206. In these cases, courts have looked to the nature of the conduct or effects in the United States to determine whether extraterritorial application would be consistent with the purposes underlying the statute. *See, e.g., Grunenthal GmbH v. Hotz*, 712 F.2d 421, 424-25 (9th Cir. 1983); *SEC v. Kasser*, 548 F.2d 109 (3d Cir.), *cert. denied sub nom. Churchill Forest Industries (Manitoba), Ltd. v. SEC*, 431 U.S. 938 (1977); *Bersch, supra*, 519 F.2d at 985-93; *Schoenbaum, supra*, 405 F.2d at 206-08.

and substantial harm to interests in the United States. *See, e.g., Continental Grain (Australia) Pty. Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409, 416-17 (8th Cir. 1979); *Vencap, supra*, 519 F.2d at 1015-17; *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1334 (2d Cir. 1972); *Schoenbaum v. Firstbrook*, 405 F.2d 200, 206-09 (2d Cir.), *rev'd on other grounds*, 405 F.2d 125 (2d Cir. 1968) (en banc), *cert. denied sub nom. Manley v. Schoenbaum*, 395 U.S. 906 (1969). The underlying theory is that Congress would have wished domestic markets and domestic investors to be protected from improper foreign transactions. *See Vencap, supra*, 519 F.2d at 1016-17; *Schoenbaum, supra*, 405 F.2d at 206. *See also Kasser, supra*, 548 F.2d at 116.

The district court's analysis under the conduct and effects tests was derived from these analogous cases. We find that the district court correctly applied the tests to the facts of this case and adopt its analysis under both tests.[12] *See Tamari v. Bache & Co. (Lebanon) S.A.L.*, 547 F. Supp. 309 (N.D. Ill. 1982). The transmission of commodity futures orders to the United States would be an essential step in the consummation of any scheme to defraud through futures trading on United States exchanges. Further, when transactions initiated by agents abroad involve trading on United States exchanges, the pricing and hedging functions of the domestic markets are directly implicated, just as they would be by an entirely domestic transaction. If transactions are the result of fraudulent representations, unauthorized trading or mismanagement of trading accounts, prices and trading volumes in the domestic marketplace will be artificially influenced, and public confidence in the markets could be undermined.

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12 We also note that the Second Circuit in *Psimenos, supra*, expressly approved the district court's conclusion that the transmission of a customer's orders from abroad to the United States constitutes sufficient conduct within the United States to support jurisdiction under the CEA.

Appendix B

By asserting jurisdiction under the conduct and effects rationales, the purposes of the Act are advanced. Were we to construe the CEA as inapplicable to the foreign agents of commodity exchange members when they facilitate trading on domestic exchanges, the domestic commodity futures market would not be protected from the negative effects of fraudulent transactions originating abroad. Because the fundamental purpose of the Act is to ensure the integrity of the domestic commodity markets, we expect that Congress intended to proscribe fraudulent conduct associated with any commodity future transactions executed on a domestic exchange, regardless of the location of the agents that facilitate the trading.

We therefore affirm the district court's order and opinion finding subject matter jurisdiction over this case.

APPENDIX C

Appendix C

UNITED STATES DISTRICT COURT
N. D. Illinois, E. D.

No. 75 C 4189

May 25, 1982

Abdallah W. TAMARI, et al.,

Plaintiffs,

v.

BACHE & CO. (LEBANON) S.A.L.,

Defendant.

Robert P. Howington, Jr., Howington, Elworth, Osswald & Hough, Chicago, Ill., for plaintiffs.

N.A. Giambalvo, James W. Collins, Lawrence M. Gavin, Boodell, Sears, Sugrue, Giambalvo & Crowley, Chicago, Ill., for defendant.

MEMORANDUM OPINION AND ORDER

GETZENDANNER, District Judge.

This matter is before the court on the motion of defendant Bache & Co. (Lebanon) S.A.L. ("Bache Lebanon") for judgment on the pleadings or, in the alternative, for summary judgment. Defendant asserts three grounds for its motion: lack

of subject matter jurisdiction; collateral estoppel; and no right of action under the Commodity Exchange Act, 7 U.S.C. §§ 1-24 (the CEA) and associated rules and regulations. For the reasons that follow, the motion is denied, except as to the alleged violations of the exchange rules.

Subject Matter Jurisdiction

Plaintiffs Abdallah Tamari, Ludwig Tamari and Farah Tamari (the Tamaris) are Lebanese citizens and residents of that country. Defendant Bache Lebanon is a wholly-owned subsidiary of Bache & Co., Inc., a Delaware corporation ("Bache Delaware")[1], and it is a Lebanese corporation having its sole office in Beirut, Lebanon. The Tamaris allege that Bache Lebanon solicited commodity futures orders (apparently for silver, coffee and pork bellies, among other commodities) from them in Lebanon and then transmitted such orders by wire from its Beirut office to Bache Delaware's Chicago offices for execution on the Chicago Board of Trade (the CBOT) and the Chicago Mercantile Exchange (the CME).[2] They further allege that Bache Lebanon made misrepresentations regarding its expertise, gave false advice on market conditions, mismanaged their accounts, and breached its fiduciary duty. Their complaint has two counts, the first under the CEA, and the second for common-law fraud.

The jurisdictional issue is whether this court has subject matter jurisdiction over a cause of action arising from trading on American commodities exchanges when the parties to the suit are nonresident aliens and the contacts between them

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1 Bache Delaware was formerly a defendant in this litigation, but on May 19, 1976, Judge Grady, to whom this case was previously assigned, dismissed Bache Delaware. The Tamaris then arbitrated their claims against Bache Delaware and Bache Delaware prevailed in the arbitration proceedings.

2 Bache Lebanon is not a member of either exchange and thus could not execute the orders itself.

occurred outside the United States. The court concludes that it does have jurisdiction of this dispute.

The CEA has been held to have extraterritorial application in some circumstances, *Commodity Futures Trading Commission v. Muller*, 570 F.2d 1296, 1299 (5th Cir. 1978). Both parties, in arguing for and against the applicability of the CEA to the circumstances in this case, have primarily relied on the case law in analogous securities law cases. There is a substantial body of such case law defining the transnational scope of the Securities Act of 1933 and the Securities Exchange Act of 1934. See generally the cases and articles listed in *Continental Grain (Australia) Pty., Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409, 413 (8th Cir. 1979).[3]

In these cases, courts have developed two related doctrines for analyzing transnational problems, the effects test and the conduct test.[4] While some courts have indicated that both tests must be satisfied in order to sustain subject matter jurisdiction, the weight of authority holds that meeting either test establishes jurisdiction. *Continental Grain*, *supra*, 592 F.2d at 417 (8th Cir. 1979) (jurisdiction may be established by meeting either test); *Straub v. Vaisman & Co.*, 540 F.2d 591, 595 (3d Cir. 1976) (conduct alone sufficient from a jurisdictional standpoint); *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1334 (2d Cir. 1972) (same). This court need not resolve the issue, however, as under each test jurisdiction exists here.

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3 For additional analyses of the important case law in this area, see *Grunenthal GmbH v. Hotz*, 511 F.Supp. 582, 585-87 (C.D.Cal.1981); and *Recaman v. Barish*, 408 F.Supp. 1189, 1194-1202 (E.D.Pa.1975).

4 "Of course, the courts may in reality by [sic] using a much more flexible, and more traditional, approach; that is, the courts may, in each particular fact situation, be balancing the competing interests presented. . . . *cf.* Comment, *Jurisdiction in Transnational Securities Fraud Cases—SEC v. Kasser, supra*, note 4, 7 Den.J. Int'l L. & Pol'y at 286 n.46 (suggesting "test" is too simplistic a term)." *Continental Grain, supra*, 592 F.2d at 416 n.11.

Appendix C

The Effects Test

Under the effects test, courts sustain jurisdiction over conduct occurring in foreign countries when that conduct causes forseeable and substantial harm to interests within the United States, that is, when there is a substantial impact on domestic investors or on the domestic market. The doctrinal basis for this test derives from the Restatement (Second) of Foreign Relations Law of the United States § 18.[5] The first court to formulate and apply the effects test was the Second Circuit in *Schoenbaum v. Firstbrook*, 405 F.2d 200 (2d Cir.), *aff'd as to jurisdiction and rev'd on other grounds*, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert. denied sub nom., Manley v. Schoenbaum*, 395 U.S. 906, 89 S.Ct. 1747, 23 L.Ed.2d 219 (1969).

In *Schoenbaum*, an American shareholder in a Canadian corporation brought a derivative suit alleging fraud in violation of the 1934 Securities Exchange Act. The challenged transaction occurred in Canada, but it involved Canadian stock registered on the American Stock Exchange. The court held that the securities laws applied extraterritorially in that case "in order to protect domestic investors who have purchased foreign securities on American exchanges and to protect the domestic securities market from the effects of improper foreign transactions in American securities." 405 F.2d at 206.

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5 § 18. Jurisdiction to Prescribe With Respect to Effect Within Territory.

A state has jurisdiction to prescribe a rule of law attaching legal consequences to conduct that occurs outside its territory and causes an effect within its territory, if either

(a) the conduct and its effect are generally recognized as constituent elements of a crime or tort under the law of states that have reasonably developed legal systems, or

(b)(i) the conduct and its effect are constituent elements of activity to which the rule applies; (ii) the effect within the territory is substantial; (iii) it occurs as a direct and foreseeable result of the conduct outside the territory; and (iv) the rule is not inconsistent with the principles of justice generally recognized by states that have reasonably developed legal systems.

Appendix C

The effects test enunciated in *Schoenbaum* was later limited by two cases from the Second Circuit decided on the same day, *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974 (2d Cir.), *cert. denied sub nom., Bersch v. Arthur Andersen & Co.*, 423 U.S. 1018, 96 S.Ct. 453, 46 L.Ed.2d 389 (1975) and *IIT v. Vencap, Ltd.*, 519 F.2d 1001 (2d Cir. 1975). In *Bersch*, a plaintiff class consisting of thousands of shareholders, most of whom were foreign, had purchased stock in an international corporation organized under the laws of Canada. The named plaintiff, an American, brought an action against various American and foreign underwriters and an American accounting firm. The challenged public offering had been deliberately structured to avoid sales in America, but despite this some sales had been made to Americans, both within the United States and abroad.

One of the grounds for jurisdiction asserted in *Bersch* was the adverse general effect the collapse of the international corporation had on the American stock market, even though its securities were not traded on American exchanges. To support this assertion, plaintiffs submitted an affidavit from an economics professor. The *Bersch* court rejected this argument, stating:

> [W]e do not doubt that the collapse of IOS after the offering had an unfortunate financial effect in the United States. Nevertheless we conclude that the generalized effects described by Professor Mendelson would not be sufficient to confer subject matter jurisdiction over a damage suit by a foreigner under the anti-fraud provisions of the securities laws.

519 F.2d at 988. See also *Recaman v. Barish*, 408 F.Supp. 1189, 1199 n.11 (E.D.Pa. 1975) (study showing general adverse impact on economy in case where securities were not traded on domestic exchanges held to be insufficient under effects test).

In *SEC v. Kasser*, 548 F.2d 109, 113 (3d Cir.) *cert. denied sub nom. Churchill Forest Industries (Manitoba) Ltd. v. SEC*, 431 U.S. 938, 97 S.Ct. 2649, 53 L.Ed.2d 255 (1977), the Third Circuit found the effects test to be inapplicable in a case where the securities involved were not traded on American exchanges. The Court reasoned:

Appendix C

> Frequently, trading on an exchange has helped to undergrid findings of jurisdiction in other transnational cases. Where a stock exchange is involved, courts have found sufficient impact in the United States to sustain jurisdiction.

The Eighth Circuit in *Continental Grain (Australia) Pty., Ltd. v. Pacific Oilseeds, Inc.*, 592 F.2d 409, 417 n.12 (8th Cir. 1979), used a similar rationale to find the effects test unavailing where the plaintiff was a foreign corporation, where the securities involved were those of a foreign corporation and were never registered or listed on American exchanges, and where the alleged harm to the plaintiff's American corporate parent was indirect. In distinction to *Kasser* and *Continental Grain* stands the case of *IIT v. Cornfeld*, 619 F.2d 909, 918 (2d Cir. 1980), in which the court upheld jurisdiction partially on the basis that the challenged transactions involved American securities.

Bache Lebanon argues that the facts in the present case do not satisfy the effects test for jurisdiction. It contends that a "personal dispute between private foreign parties cannot have any impact whatever upon United States investors or upon the United States commodities market." (Def. Memo in Support at 12.) Concededly, both the plaintiffs and the defendant in this case are Lebanese and the allegedly fraudulent representations all occurred in Lebanon. The commodities involved, however, were traded on American exchanges.

Relying on this fact, the Tamaris counter that fraudulent transactions on American commodities exchanges have a detrimental effect on the trading on such exchanges and they have submitted an affidavit by an economics professor to that effect. Bache Lebanon attacks the sufficiency of this affidavit on the grounds discussed in the *Bersch* case, that it only describes a theoretical and generalized harm and that this type of harm cannot confer subject matter jurisdiction. Bache Lebanon continues: "Moreover, given the limited volume of Tamaris' trades in relation to total volume, it is difficult to perceive how any impact could have been felt." (Def. Reply Memo at 8.)

The flaw in Bache Lebanon's arguments is that the transactions at issue here directly involved domestic futures exchanges. The cases Bache Lebanon cites, in which courts found no jurisdiction, all involved foreign securities that were not traded on American exchanges: *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1016 (2d Cir. 1975); *Investment Properties International, Ltd. v. IOS, Ltd.*, [1970-71] Fed.Sec.L.Rep. (CCH) ¶ 93,011 at 90,736 (S.D.N.Y.), *aff'd without opinion* (2d Cir. 1971); *Fidenas AG v. Compagnie Internationale Pour L'Informatique CII Honeywell Bull S.A.*, 606 F.2d 5, 7 (2d Cir. 1979); *Finch v. Marathon Securities Corp.*, 316 F.Supp. 1345, 1347 (S.D.N.Y. 1970) ("It should be noted that [the securities involved] have never been registered in this country—nor have they ever been listed on any of our national securities exchanges or traded on our over-the-counter market.").[6]

Similarly, while Bache Lebanon correctly characterizes the affidavit of the Tamaris' expert as theoretical and generalized, the affidavit was not necessary in the first instance to establish an impact on the American futures market. In *Bersch*, the case

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6 The one case cited by Bache Lebanon that involved American securities is *Manus v. The Bank of Bermuda*, [1971-72] Fed.Sec.L.Rep. (CCH) ¶ 93,299 (S.D.N.Y. 1971). There Canadian plaintiffs sued a Bermuda defendant for a transaction that occurred in London involving the unregistered stock of a New York corporation. The court stated:

> In addition to the foregoing which compels dismissal of this complaint for failure to state a claim upon which relief can be granted, subject matter jurisdiction appears to be lacking. The parties are aliens and the principal transaction of which plaintiffs complain took place in London. The plaintiffs do not claim . . . that the transaction was detrimental to the interests of domestic investors or of the domestic securities market. . . . But the question of jurisdiction need not be reached here.

Id. at 91,650. Apart from the factual distinction between the unregistered securities in *Manus* and the commodities traded on national exchanges in this case, the court's view of the present jurisdictional problem is not swayed by the New York court's dictum.

where the court found a similar affidavit insufficient to establish jurisdiction, the securities involved in the allegedly fraudulent scheme were not registered on American exchanges and were not intended to be sold within the United States. As the court reads *Bersch* and other similar cases, the need for plaintiffs to demonstrate a particularized harm to domestic interests only arises when domestic investors or exchanges are not directly involved. Conversely, in a case such as this, where the challenged transactions involve trading on domestic exchanges, harm can be presumed, because the fraud alleged implicates the integrity of the American market.

The court recognizes that no prior case has had to decide whether to sustain jurisdiction under the effects test solely on the basis that the securities involved were traded on American exchanges. The case law, however, does emphasize that "the absence of certain of the elements which led to finding subject matter jurisdiction in [prior] cases does not necessarily preclude a similar conclusion on the different facts presented here." *Bersch, supra*, 519 F.2d at 986. See also *IIT v. Cornfeld*, 619 F.2d 909, 918 (2d Cir. 1980), "the presence or absence of any single factor which was considered significant in other cases . . . is not necessarily dispositive," quoting *Continental Grain, supra*, 592 F.2d at 414. Applying this case-by-case approach here, the court concludes that it has jurisdiction under the effects test in this dispute involving the allegedly fraudulent solicitation of orders for American commodities.

The Conduct Test

The conduct test bases jurisdiction on conduct occurring within the United States. The residence or citizenship of the parties and the foreign or domestic nature of the securities involved, while relevant, is not the focus of inquiry; instead the courts concentrate on the relative importance of activities within the United States to the success of the alleged scheme to defraud. If such conduct is substantial rather than merely preparatory, incidental or fortuitous, the courts are more likely to find jurisdiction. This test derives from Restatement (Sec-

ond) of Foreign Relations Law of the United States § 17[7] and as a policy matter seeks to prevent the United States from being "used as a base for manufacturing fraudulent security devices for export, even when these are peddled only to foreigners." *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1017 (2d Cir. 1975).

This test was first used in *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972). In *Leasco*, American plaintiffs alleged fraud in the sale of the securities of an English corporation that were not registered or traded on American exchanges and were not sold within the United States. The court upheld jurisdiction because "substantial misrepresentations" were made within this country. 468 F.2d at 1339. Since *Leasco*, courts have focused on defining the limits of the conduct test.

In *Travis v. Anthes Imperial Ltd.*, 473 F.2d 515 (8th Cir. 1973), the facts paralleled those in *Leasco*. American plaintiffs sued Canadian defendants over a tender offer and merger involving Canadian securities that were not registered or traded on American exchanges. The plaintiffs alleged that they were led to believe that if they retained their stock until after a tender offer had been made to Canadian shareholders, a separate tender offer would be made to them and other United States shareholders. The court reasoned that subject matter jurisdiction depended on the existence of "significant conduct with respect to the alleged violations in the United States." 473 F.2d at 524.

In finding such significant conduct, the court noted that the plaintiffs alleged that the mails and telephones had been used

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7 § 17. Jurisdiction to Prescribe with Respect to Conduct, Thing, Status or Other Interest within Territory.

A state has jurisdiction to prescribe a rule of law

(a) attaching legal consequences to conduct that occurs within its territory, whether or not such consequences are determined by the effects of the conduct outside the territory, and

(b) relating to a thing located, or a status or other interest localized, in its territory.

to communicate misrepresentations. The court also considered as "significant contacts" within the United States the closing of the ultimate sale of the plaintiffs' shares (which took place in St. Louis, Missouri) and communications leading thereto "even though they were made at a time when the plaintiffs were aware of the defendants' true intentions and were thus not misleading." 473 F.2d at 527. The court reasoned:

> These contacts were the final stage of the defendants' alleged scheme to defraud the named plaintiffs which began with the limitation of the tender offer to Anthes Canadian shareholders and continued on through the acquisition of plaintiffs' shares by [one of the defendants.] They were essential to the alleged scheme and may not be ignored in determining the propriety of subject matter jurisdiction.

Id. Similarly, in *Straub v. Vaisman & Co.*, 540 F.2d 591, 595 (3rd Cir. 1976), one of the factors that the court relied upon to establish sufficient conduct within the United States was that the stock involved had been traded on an American over-the-counter exchange.

In *Bersch v. Drexel Firestone, Inc.*, 519 F.2d 974, 987 (2d Cir.), *cert. denied sub nom. Bersch v. Arthur Andersen & Co.*, 423 U.S. 1018, 96 S.Ct. 453, 46 L.Ed.2d 389 (1975), the Second Circuit cut back on the reach of the conduct test, stating:

> [W]e see no reason to extend it to cases where the United States activities are merely preparatory . . . and are relatively small in comparison to those abroad.

See also *Vencap, supra*, 519 F.2d at 1018, where the court indicated:

> [J]urisdiction is limited to the perpetration of fraudulent acts themselves and does not extend to mere preparatory activities or the failure to prevent fraudulent acts where the bulk of the activity was performed in foreign countries. . . .

Appendix C

Conduct that occurs within the United States by chance or merely for convenience is also insufficient for jurisdictional purposes. *Leasco, supra*, 468 F.2d at 1338 (2d Cir. 1972) (dictum; no jurisdiction when a German and a Japanese meet in New York for convenience and the latter fraudulently induces the former to purchase Japanese securities on the Tokyo Stock Exchange); *Grunenthal GmbH v. Hotz*, 511 F.Supp. 582, 583, 588 (C.D.Cal. 1981). In *Grunenthal*, all the parties were foreign nationals or corporations; the securities involved were foreign and not traded on any American exchange; the negotiations involved conduct in four countries, including the United States; and the conduct in each country was of relatively equal importance. The challenged transaction, however, was concluded within the United States because one of the defendants was here on a temporary non-immigrant visa for business. The court concluded that the fact that the transaction was concluded here was insufficient because it found that this was only a matter of convenience.

Bache Lebanon argues that the conduct of Bache Delaware and its agents that occurred within the United States was determined to be lawful in the arbitration proceedings and "it follows that all of the activity, if any, constituting the violations must, of necessity, have occurred outside the United States. We are thus left with a case of an alleged fraud on foreigners by a foreign corporation in a foreign country." (Def. Memo in Support at 14.) The Tamaris argue that Bache Lebanon wired the orders it solicited from them to Bache Delaware in Chicago, Illinois, for execution on the Chicago exchanges.[8] They

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8 In its reply brief, Bache Lebanon asserts that it wired at least some of the Tamaris' orders to London and that the orders were then wired from London to the United States on Bache Delaware's "Hassler System." "In essence," Bache Lebanon argues, "*Bache Delaware* not Bache Lebanon, wired the orders from London to within the United States." (Def. Reply Memo at 5 n.3) (emphasis in original). The Hassler System is a private wire system. Testimony establishes that, with this system, an order is teletyped on the system from a branch in Beirut to a central computer in London, where it is

further contend that these transmission constitute conduct within the United States and that such conduct is sufficient to confer jurisdiction.

Several courts have found that making phone calls or sending mail to the United States should be deemed conduct within the United States for jurisdictional purposes in transnational cases. *E.g., Continental Grain, supra,* 592 F.2d at 420 n.18:

> Both the place of sending and the place of receipt constitute locations in which conduct takes place when the mails or instrumentalities of interstate commerce are used to transmit communications;

Travis, supra, 473 F.2d at 524 n.16; *Leasco, supra,* 468 F.2d at 1335. Thus, Bache Lebanon's transmission of the Tamaris' orders from Beiruit to Chicago constitutes conduct within the United States.

The court determines, moreover, that such conduct is substantial or significant when viewed in relation to its importance to the success of the alleged scheme to defraud. As in *Travis, supra,* 473 F.2d at 527, Bache Lebanon's wiring the Tamaris' orders to Chicago and the execution of those orders on the Chicago exchanges were the final steps in the alleged scheme. And again as in *Travis,* the "lawfulness" of Bache Delaware's execution of the orders, as found by the arbitrators, does not cure any prior fraud in Bache Lebanon's solicitations from the Tamaris, nor does it prevent the execution of the orders from

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almost simultaneously relayed to the United States by the computer. (Dep. of Mr. Fivian, pp.12-13). In light of this testimony, the court assumes for purposes of this motion (without, however, finding such to be a fact on the merits, see *Grunenthal, supra,* 511 F.Supp. at 584 n.2) that Bache Lebanon's use of this system constituted a communication from outside to within the United States. Moreover, there is testimony suggesting that the Hassler System could be bypassed and an order placed directly by phone. (Dep. of Mr. Fivian, p. 14). Whether any of the Tamaris orders were directly telephoned from Beiruit to Chicago is not clear from this record.

being a necessary and foreseeable step in a scheme to defraud, and thus substantial conduct within the United States. On the basis of these transmissions, therefore, the court finds subject matter jurisdiction under the conduct test.

Collateral Estoppel

Bache Lebanon argues that the Tamaris, in their complaint, allege the same violations that were the subject of the arbitration proceedings between the Tamaris and Bache Delaware, that "all actions taken by Bache Lebanon in connection with the Tamaris' accounts were taken by Bache Lebanon as agent for Bache Delaware" (Def. Memo in Support at 15-16), and therefore that the arbitral decision in Bache Delaware's favor constitutes an adjudication that Bache Lebanon's actions were proper and lawful. Bache Lebanon was not a party to the arbitration; thus, if it is to rely on the decision there, it must show that it is entitled to do so under principles of collateral estoppel.

Once before in this litigation Bache Lebanon raised this identical argument, that the arbitral decision collaterally estops the Tamaris from proceeding against it. This was the subject of a motion to dismiss, treated as a motion for summary judgment, that Bache Lebanon argued to Judge Grady when this case was assigned to him. In a memorandum opinion dated March 17, 1978, Judge Grady rejected Bache Lebanon's argument and denied its motion.

In his opinion, Judge Grady made three points: he concluded that it was impossible to tell what the arbitration panel had decided regarding Bache Lebanon's conduct due to the absence of any express findings; that at least one issue—that of Bache Lebanon's independent liability—could not be precluded by the decision in any case; and that the totality of the circumstances established that it would be inequitable to apply the doctrine of collateral estoppel in this case. Bache Lebanon has not persuaded this court that Judge Grady's conclusions were incorrect.

Appendix C

Right of Action

Bache Lebanon's final argument, that there is no implied private right of action under Sections 4b and 4c of the CEA, 7 U.S.C. §§ 6b and 6c, can be quickly answered. Prior to the 1974 amendments to the CEA, federal courts had routinely recognized a private cause of action under the statute, and in the recent case of *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, ___ U.S. ___, ___, 102 S.Ct. 1825, 1842, 72 L.Ed.2d 182 (1982), the Supreme Court held that the private cause of action survived the 1974 amendments.

Bache Lebanon also argues that no private right of action exists for violations of the rules of the exchanges involved, but the court need not decide this issue. The Tamaris' complaint alleges violations of CBOT Rules Nos. 210, 1822(8), (12), (14) and (15), 1822-A and 1990, and violations of CME Rules Nos. 928 and 942. All of these rules regulate the conduct of members of the respective exchanges. Bache Lebanon, however, is not a member of either the CBOT or the CME. The Tamaris cannot base a cause of action against Bache Lebanon on any violation of the exchange rules, and to the extent that their complaint is based on such violations, Bache Lebanon's motion is granted.

Conclusion

Bache Lebanon's motion for judgment on the pleadings or, in the alternative, for summary judgment is denied, except that it is granted as to all claims based on violations of the commodity exchanges' rules.

APPENDIX D

Appendix D

SEC. 4b. It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or by products thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) to cheat or defraud or attempt to cheat or defraud such other person;

(B) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling

order of such person, or become the seller in respect to any buying order of such person.

Nothing in this section or in any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of cotton for future delivery in the same month, from executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange.

SEC. 4c. It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or by products thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) if such transaction is, is of the character of, or is commonly known to the trade as, a "wash sale," "cross trade," or "accommodation trade," or is a fictitious sale;

(B) if such transaction is, is of the character of, or is commonly known to the trade as, a "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or

(C) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity trans-

actions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall not have been disapproved by the Secretary of Agriculture. Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.

APPENDIX E

Appendix E

FOREIGN OFFICES AND FOREIGN REPRESENTATIVES

Arranged Alphabetically as to Countries and Cities

ARAB EMIRATES (UNION OF)

Cairo

Kidder, Peabody & Co. Incorporated
9 Had el Laban Street
Garden City
(Kidder, Peabody & Co., Ltd.)

Dubai

Hutton (E.F.) & Company, Inc.
Chamber of Commerce Bldg.,
P.O. Box 5241

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Union of Arab Emirates
P.O. Box 3911 Al Fuleij Bldg.

ARGENTINA

Buenos Aires

Becker (A.G.) Paribas Incorporated
LaValle 648, 1047

Merrill Lynch, Pierce, Fenner & Smith de Argentina
San Martin 323 Piso 13

Prudential-Bache Securities, Inc.
25 De Mao 537, Piso 14

AUSTRALIA

Melbourne

First Boston Corporaton
535 Bourke St.

Appendix E

AUSTRIA

Vienna

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Tegetthoffstrasse NBR 1, A-1015

BAHRAIN

Manama

Hutton (E.F.) & Company Inc.
Unitag House, Mezzanine Floor
Government Rd.
P.O. Box 82

BELGIUM

Brussels

Dominick & Dominick Incorporated
Rue de L'Aurore 2

Drexel Burnham Lambert Incorporated
5, Boulevard de l'Empereur
(Burnham Securities, S.A.)

First Manhattan Co.
203 Avenue Louise

Hutton (E.F.) & Company Inc.
10 Place Du Champ De Mars

Laidlaw Adams & Peck, Inc.
15 Rue Blanche

Merrill Lynch, Pierce, Fenner & Smith Incorporated
221 Avenue Louise
(Merrill Lynch, Pierce, Fenner & Smith Belge S.A.)

Prudential-Bache Securities, Inc.
Marubeni Bldg., 7th Fl.,
283 Ave. Louise, Box 11

Shearson/American Express Inc.
368 Ave. Louise

Thomson McKinnon Securities Inc.
43 Rue de Namur

CANADA

ALBERTA

Calgary

Merrill Lynch, Pierce, Fenner & Smith Incorporated
480 7th Ave. S.W.
(Royal Securities Corp. Ltd.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
480 7th Avenue, S.W. Bentall Bldg.

Prudential-Bache Securities, Inc.
220 Three Calgary Place

Edmonton

Merrill Lynch, Pierce, Fenner & Smith Incorporated
10M-10303 Jasper Ave.
(Royal Securities Corp., Ltd.)

Prudential-Bache Securities, Inc.
820-10025 Jasper Ave.

Montreal

Dean Witter Reynolds Inc.
635 Dorchester Blvd. West

Vancouver

Merrill Lynch, Pierce, Fenner & Smith Incorporated
200 Granville St.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
544 Howe Street
(Royal Securities Corp., Ltd.)

Paine, Webber, Jackson & Curtis Inc.
595 Howe St., Ste. 1115

Prudential-Bache Securities, Inc.
MacMillan Bloedel Bldg.,
1075 West Georgia St.

Victoria

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Royal Trust Bldg.
(Royal Securities Corp., Ltd.)

MANITOBA

Winnipeg

Merrill Lynch, Pierce, Fenner & Smith Incorporated
1300 One Lombard Pl.
(Royal Securities Corp., Ltd.)

NEW BRUNSWICK

St. John

Merrill Lynch, Pierce, Fenner & Smith Incorporated
44 Prince William Street
(Royal Securities Corp., Ltd.)

NEWFOUNDLAND

St. John's

Merrill Lynch, Pierce, Fenner & Smith Incorporated
139 Water Street
(Royal Securities Corp., Ltd.)

NOVA SCOTIA

Halifax

Merrill Lynch, Pierce, Fenner & Smith Incorporated
300 Barrington Tower
Scotia Square B3J 2A8
(Royal Securities Corp., Ltd.)

Appendix E

ONTARIO

Hamilton

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Canada Trust Bldg.
(Royal Securities Corp., Ltd.)

Montreal

Dean Witter Reynolds Inc.
635 Dorchester Blvd. West

First Boston Corporation
1155 Dorchester Blvd. West

Ottawa

Merrill Lynch, Pierce, Fenner & Smith Incorporated
151 Sparks St., La Promenade

Toronto

Dean Witter Reynolds Inc.
181 University Avenue

Dominick & Dominick Incorporated
111 Royal Trust Tower,
Toronto Dominion Center,
P.O. Box 272
(Dominick Corp. of Canada)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Toronto-Dominion Centre
(Royal Securities Corp., Ltd.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
11 King West

Midland Doherty Inc.
Commercial Union Tower,
P.O. Box 25, Toronto Dominion Centre

Prudential-Bache Securities, Inc.
18 King St., East

Shearson/American Express Inc.
55 University Ave., Ste. 501

Appendix E

PRINCE EDWARD ISLAND

Charlottetown

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Grafton St.
(Royal Securities Corp. Ltd.)

QUEBEC

Montreal

Dominick & Dominick Incorporated
Place Ville Marie
(Dominick Corp. of Canada)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
800 Dorchester Boulevard, West

Merrill Lynch, Pierce, Fenner & Smith Incorporated
800 Victoria Sq.
(Royal Securities Corp., Ltd.)

Prudential-Bache Securities, Inc.
4 Westmount Sq., Ste. 160

Shearson/American Express Inc.
Capital Centre,
1200 McGill College Ave.

Transatlantic Securities Company*
1155 Sherbrooke West., Ste. 1401

Quebec

Merrill Lynch, Pierce, Fenner & Smith Incorporated
220 Grand Alles
(Royal Securities Corp., Ltd.)

CHILE

Santiago

Shearson/American Express Inc.
Augustinas 1360, 4th Fl.

Appendix E

ENGLAND

Bradford

Prudential-Bache Securities, Inc.
Five Wool Exchange

London

Bear, Stearns & Co.
10-12 Copthall Ave.

Becker (A.G.) Paribas Incorporated
17/19 Lincoln's Inn Fields

Brown Brothers Harriman & Co.
Prince Rupert House
64 Queen Street

Burns Fry and Timmins, Inc.
9 Bosinghall Street

Dean Witter Reynolds Inc.
One Throgmorton Avenue

Dean Witter Reynolds Inc.
56 Leadenhall Street
(Dean Witter International, Ltd.)

Dillon, Read & Co. Inc.
10 Cheaterfield St.

Dominick & Dominick Incorporated
8 Little Trinity Lane

Donaldson, Lufkin & Jenrette Securities Corporation
22 Austin Friars

Drexel Burnham Lambert Incorporated
Winchester House
77 London Wall

Eberstadt (F.) & Co., Inc.
Brettenham House
Lancaster Pl.

Fahnestock & Co.
62 London Wall

First Boston Corporation
22 Bishopsgate, 3rd Fl.

Goldman, Sachs & Co.
40 Basinghall Street,
(Goldman Sachs International Corp.)

Hambrecht & Quist Incorporated
Queens House
8 Queens St., 2nd Fl.

Hutton (E.F.) & Company Inc.
58 Mark Lane
Cereal House

Hutton (E.F.) & Company Inc.
17 C. Curzon
(Hutton (E.F.) International)

Kidder, Peabody & Co. Incorporated
99 Bishopsgate
(Kidder, Peabody & Co., Ltd.)

Ladenburg, Thalmann & Co., Inc.
108 Cannen St.

Lehman Brothers Kuhn Loeb Incorporated
16 St. Martins LaGrand

Lehman Brothers Kuhn Loeb Incorporated
Commercial Union Bldg.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
153 New Bond St.
(Merrill Lynch, Pierce, Fenner & Smith Ltd.)

Merrill Lynch, Pierce Fenner & Smith Incorporated
3-5 Newgate St.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
P.O. Box 236
Black Swan House
Kennet Wharf Lane

Appendix E

Moseley, Hallgarten, Estabrook & Weeden, Inc.
Bilbao House
New Broad St., 4th Fl.

Neuberger & Berman
4 and 5 Grosvenor Pl.

Oppenheimer & Co., Inc.
Portland House
72-73 Basinghall St.

Ovest Securities, Inc.
Plantation House
Mincing Lane

Paine, Webber, Jackson & Curtis Incorporated
11/12 Finsbury Sq.

Pollock (Wm. E.) & Co. Inc.
114 Old Broad St.

Prudential-Bache Securities, Inc.
5 Burlington Gardens

Prudential-Bache Securities, Inc.
First Floor
Plantation House
Fenchurch St.

Prudential-Bache Securities, Inc.
River House 119-121
Minories

Roulston Research Corp.
55 New Bond Street

Salomon Brothers Inc.
One Angel Court
(Salomon Brothers International Ltd.—Corporate Affiliate)

Seeman (Aubrey N.) & Co., Inc.
Salisbury House
Finsbury Circus

Seligmann, Harris and Co., Inc.
Friendly House
21-24 Chiswell Street

Shearson/American Express Inc.
16 Moorfields
High Walk

Shearson/American Express Inc.
Saint Alphage House
2 Foure Street

Smith Barney, Harris Upham & Co. Incorporated
Brewers' Hall
Aldermanbury Sq.

Smith Barney, Harris Upham & Co. Incorporated
18 Finsbury Circus

Thomson McKinnon Securities Inc.
55 London Wall

Wertheim & Co.
54/55 London Wall

FRANCE

Paris

Bear, Stearns & Co.
7 Rue Drouot, 75009

Brown Brothers Harriman & Co.
17 Ave. Matignon
(Brown Harriman Corp.)

Dean Witter Reynolds Inc.
10, Rue de la Paix

Donaldson, Lufkin & Jenrette Securities Corporation
42 Avenue Montaigne

Drexel Burnham Lambert Incorporated
23 Place Vendome
(Burnham and Company, S.A.R.L.)

Appendix E

Eberstadt (F.) & Co., Inc.
8 Place Vendome

Fahnestock & Co.
5 Rue Gaillon 2 EME

Hutton (E.F.) & Company Inc.
43 Avenue Marceau, 75116

Kidder, Peabody & Co. Incorporated
422, Rue Saint Honore
(Kidder, Peabody S.A.)

Ladenburg, Thalmann & Co., Inc.
28 Rue des Petites-Ecuries

Laidlaw Adams & Peck, Inc.
42 Ave. Friedland

Merrill Lynch, Pierce, Fenner & Smith Incorporated
25 Avenue des Champs-Elysee
(Merrill Lynch, Pierce, Fenner & Smith S.A.F.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
142 Boulevard Haussman

Merrill Lynch, Pierce, Fenner & Smith Incorporated
4, Rue Saint-Florentin, 75
(Merrill Lynch, Pierce, Fenner & Smith Securities Underwriter Limited)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
96 Avenue D'Iena

Moore & Schley, Cameron & Co.
120 Ave. des Champs Elysees
(du Pasquier et Cie, S.A.R.L.)

Moseley, Hallgarten, Estabrook & Weeden Inc.
125 Champs Elysee

Paine, Webber, Jackson & Curtis Inc.
41 Avenue George V

Paine, Webber, Jackson & Curtis Incorporated
10 Rue Duphot, 75001

Prudential-Bache Securities, Inc.
6 Rue Royale

Prudential-Bache Securities, Inc.
370 Rue St. Honore

Shearson/American Express Inc.
12114 Rond-Point Champs Elysees

Smith Barney, Harris Upham & Co. Incorporated
7, Place Vendome

Stralem & Company Incorporated
30, Ave. Marceau

Thomson McKinnon Securities Inc.
23 Rue Royale

Wertheim & Co.
4, Place de la Concorde
(Wertheim & Cie., S.A.)

Wertheim & Co., Inc.
23 Boulevard Haussman, 75009

GERMANY

Dusseldorf

Dean Witter Reynolds Inc.
Konigsalle 88

Merrill Lynch, Pierce, Fenner & Smith Incorporated
KOE Center Bldg.
Koenig Sallee 30

Prudential-Bache Securities, Inc.
Benrather/Ecke
Kasernenstrasse, 4000

Frankfurt

Dean Witter Reynolds Inc.
Westendstrasse 8, 6000

Dominick & Dominick Incorporated
Westendrasse 28

Hutton (E.F.) & Company Inc.
6000 Frankfurt 1
Bockenheimer Landstrasse 51-53
Rhein-Main-Ctr.

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Ulmenstrasse 30, 6000
Frankfurt/Main, Germany
(Merrill Lynch, Pierce, Fenner & Smith International Limited)

Moseley, Hallgarten, Estabrook & Weeden, Inc.
Friedrichsstrasse 34, 6000

Prudential-Bache Securities, Inc.
Wiesenhuettenstrasse 18

Roulston Research Corp.
17 Unterlindau

Shearson/American Express Inc.
Mainzer Landstrasse 27-31
6000 Frankfurt/Main

Thomson McKinnon Securities Inc.
Hochstrasse 43

Hamburg

Dominick & Dominick Incorporated
Grosse Bleichier 32
2000 Hamburg 36

Hutton (E.F.) & Company Inc.
Hamburgerof
Jungfernstieg 30, 5000

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Paul Strasse 3

Prudential-Bache Securities, Inc.
Neuer Wall 10, 2000

Shearson/American Express Inc.
Neuer Wall 84

Munich

Prudential-Bache Securities Inc.
Ludwigstrasse 8

Dean Witter Reynolds Inc.
Sonnenstrasse 1

Fahnestock & Co.
Frauenplatz 11

Hutton (E.F.) & Company Inc.
Odeonsplatz 18

Stuttgart

Dominick & Dominick Incorporated
Calwerstrasse 19

Prudential-Bache Securities, Inc.
Koenigstrasse 1A, 5-7000

GREECE

Athens

Droulia & Co.
3 Stadiou Street

Hutton (E.F.) & Company Inc.
Vassilissis Sophias 1201

Merrill Lynch, Pierce, Fenner & Smith Incorporated
17 Hellas L.L.C.
Valooriton Street

Paine, Webber, Jackson & Curtis Inc.
(International)
Koumbari #4

Prudential-Bache Securities, Inc.
5 Koumbari St.

Appendix E

GUAM

Agana

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Julale Shopping Center

HOLLAND

Amsterdam

Bear, Stearns & Co.
Singel 540

Drexel Burnham Lambert Incorporated
Signel 540

Herzfeld & Stern
Singel 160

Hutton (E.F.) & Company, Inc.
Dam 21

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Weesperstraat 107
(Merrill Lynch, Pierce, Fenner & Smith International Limited)

Prudential-Bache Securities, Inc.
Geboaw Rivierstaete
Amsteldijk 166

Shearson/American Express Inc.
491 Herengracht

Rotterdam

Merrill Lynch, Pierce, Fenner & Smith Incorporated
30 Korte Hoogstraat

HONG KONG (B.C.C.)

Hong Kong

Dean Witter Reynolds Inc.
(Dean Witter Reynolds International Inc.)
1501 Gloucester Tower

Donaldson, Lufkin & Jenrette Securities Corporation
Bank of America Tower,
12 Harcourt Rd., Ste. 1008

Drexel Burnham Lambert Incorporated
2708 New World Tower
Queen's Rd. Central

Drexel Burnham Lambert Incorporated
World Wide House
Des Voeux Rd., Rm. 2002

Kidder, Peabody & Co. Incorporated
Rooms 1707-1709
Connaught Center
Connaught Road, Central
(Kidder, Peabody & Co., Ltd.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
St. George's Bldg.
2 Ice House Street
(Merrill Lynch, Pierce, Fenner & Smith International Limited)

Paine, Webber, Jackson & Curtis Incorporated
St. George's Bldg.
2 Icehouse Street

Prudential-Bache Securities, Inc.
Shell House
Queens Road Central

Salomon Brothers Inc.
2907 Alexandra House
16-20 Charter Rd.

Schwab (Charles) & Co. Inc.
The Bank of America Tower, 7th Floor
12 Harcourt Road

Shearson/American Express Inc.
St. Georgia's Bldg.
2 Ice House St.
(Shearson Hayden Stone Far East Limited, subsidiary)

Appendix E

ITALY

Milan

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Via Hoepli 7
(Merrill Lynch, Pierce, Fenner & Smith S.P.A)

Rome

Dean Witter Reynolds Inc.
Via Bertoloni 57

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Via Carducci 10
(Merrill Lynch, Pierce, Fenner & Smith S.P.A.)

Thomson McKinnon Securities Inc.
8 Via Lacullo

JAPAN

Tokyo

Becker (A.G.) Paribas Incorporated
Yurakucho Denki Bldg.
7-1 Yurakucho-Cham
Chiyoda-Ku

Drexel Burnham Lambert Incorporated
Ste. 430, Fuji Bldg.
2-3 Marunouchi 3 Chome
Chiyoda-Ku

First Boston Corporation
Kokusai, Bldg.
1-1 Marunouchi, 3-Chome
Chiyoda-Ku

Goldman, Sachs & Co.
704 Yurakucho Bldg., 7th Fl.
1-10-1 Yurakucho
Chiyoda-Ku
(Goldman Sachs International Corp.)

Kidder, Peabody & Co. Incorporated
AIU Bldg.
1-3 Maranouchi, 1-chome
Chiyoda-Ku

Lehman Brothers Kuhn Loeb Incorporated
P.O. Box 127
Kasumigaseki Bldg.
3-2-5 Kasumigaseki, Ste. 2618
Chiyoda-Ku
(Kuhn, Loeb & Co. Asia)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Toranomon-Mitsui Bldg. 8-1
Kasumi Gaseki, 3-Chome
Chiyoda-Ku
(Merrill Lynch, Pierce, Fenner & Smith S.A.)

Paine, Webber, Jackson & Curtis Incorporated
AIV Bldg., 5th Floor
1-3 Marunouchi, 1 Chome
Chiyoda-Ku

Salomon Brothers Inc.
Fukoku Seimei Bldg., 22
Uchisaiwai-Cho, 2 Chome
Chiyoda-ku

LEBANON

Beirut

Hutton (E.F.) & Company Inc.
Estral Centre, 8th Fl.
Hamra St.
P.O. Box 113-5583

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Starco North Building
P.O. Box 5316
(Merrill Lynch, Pierce, Fenner & Smith International Limited)

Appendix E

LUXEMBOURG

Luxembourg

Hutton (E.F.) & Company Inc.
1 Rue Du Fort Elizabeth

MONACO

Monte Carlo

Hutton (E.F.) & Company
Le Montaigne
7/9 Ave., De Grande

Prudential-Bache Securities, Inc.
Sporting d'Hiver

Shearson/American Express Inc.
Park Place
25 Ave., De La Costa

Thomson McKinnon Securities Inc.
Le Schuylkill
19 Blvd. De Suisse

KOREA

Seoul

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Hankook Ilbo Bldg.
14 Chung Hak-Dong
Chongnoku

NETHERLANDS, ANTILLES

Amsterdam

Merrill Lynch, W.V.
Merrill Lynch House, 51
Frederiksplein

Prudential-Bache Securities, Inc.
Geboaw Riverstaeter
Amsteldijk 166

PANAMA (REPUBLIC OF)

Panama

Merrill Lynch, Pierce, Fenner & Smith Incorporated
18 Acquilono de la Guardia
Apartado 8065

PHILIPPINES

Manila

Merrill Lynch, Pierce, Fenner & Smith Incorporated
A.I.U. Bldg., Ayala Ave.
Makati Rizal
P.O. Box 7110 Mia Airmail Exchange Ctr. 3120

PUERTO RICO

Hato Rey

Dean Witter Reynolds Inc.
Banco de Ponce Bldg., 268
Munoz Rivera Ave.

First Boston Corporation (The)
Banco Popular Ctr.

Kidder, Peabody & Co. Incorporated
920 Banco Popular Center

Philips, Appel & Walden, Inc.
Banco de Ponce Bldg., Mezzanine Fl.

Raymond, James & Associates, Inc.
Banco de Ponce Bldg., 268
Munoz Rivera Ave., Ste. 2201

Shearson/American Express Inc.
Banco de Ponce Bldg., 16th Fl.,
P.O. Box SLR

Appendix E

San Juan

Becker (A.G.) Paribas Incorporated
Banco de Ponce, Ste. 1209
G.P.O. Box 892

Merrill Lynch, Pierce, Fenner & Smith Incorporated
1 Banco Popular Ctr., Munoz Rivera Ave.

Paine, Webber, Jackson & Curtis, Inc.
Chase Manhattan Bank Bldg.

Prudential-Bache Securities, Inc.
255 Ponce de Leon Avenue and Bolivia Street

SINGAPORE (B.C.C.)

Singapore

Dean Witter Reynolds Inc.
4108 O.C.B.C. Centre, Chulia St.

Drexel Burnham Lambert Incorporated
5 Shenton Way, 22-03 UIC Bldg.
Singapore 0106

Merrill Lynch, Pierce, Fenner & Smith Incorporated
18th Fl., Shing Kwanhouse, Shenton Way

Prudential-Bache Securities, Inc.
Ste. 1402, UOB Building, 1 Bonham St.

Shearson/American Express Inc.
1201-1205 12th Fl.,
Shing Kwan House, 4 Shenton Way

SPAIN

Barcelona

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Avinguda Diagonal 534
(Merrill Lynch, Pierce, Fenner & Smith Espanola, S.A.)

Madrid

Drexel Burnham Lambert Incorporated
Gorbea 2, Paseo De La Castillana 149

Hutton (E.F.) & Company, Inc.
Calle Fortuny 39

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Edificio Piramide, 7th Floor, Paseo de la Castellana 31
(Merrill Lynch, Pierce, Fenner & Smith Espanola S.A.)

Prudential-Bache Securities, Inc.
Alcala 32

Shearson/American Express Inc.
63 Avenida Del Generalisimo

SWITZERLAND

Basle

Dominick & Dominick Incorporated
Aeschengraben 10

Shearson/American Express Inc.
Asschenvoistadt 55

Chesieres

Donaldson, Lufkin & Jenrette Securities Corporation
Case Postale 55, 1885 Chesieres

Chiasso

Prudential-Bache Securities, Inc.
6830 Via Valdani 2

Geneva

Baird, Patrick & Co., Inc.
9 Rue Calvin

Bear, Stearns & Co.
P.O. Box 40, 30 Rue du Rhone 1211

Appendix E

Becker (A.G.) Paribas Incorporated
16 Ave. Eugene-Pittard
(Becker Securities Incorporated S.A.)

Dean Witter Reynolds Inc.
7, Rue Versonnex

Drexel Burnham Lambert Incorporated
P.O. Box 290

Eberstadt (F.) & Co., Inc.
24 Avenue de Champel

First Boston Corporation
No. 7 Place du Molard

Herzfeld & Stern
14 Avenue Ernest Hentsch

Hutton (E.F.) & Company Inc.
9 Place du Bourg-de-Four

Kidder, Peabody & Co. Incorporated
11, Cours de Rive, 211 Geneva 3
(Kidder, Peabody, Geneve S.A.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
65 Rue du Rhone
(Merrill Lynch, Pierce, Fenner & Smith S.A.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated
31 Rue du Rhone

Merrill Lynch, Pierce, Fenner & Smith Incorporated
62 Rue du Rhone

Moseley, Hallgarten, Estabrook & Weeden, Inc.
Cours de Rive 4

Paine, Webber, Jackson & Curtis Inc.
3 Place St. Gervais

Prudential-Bache Securities, Inc.
40 Rue du Rhone

Rothschild (L.F.), Unterberg, Towbin
21 Rue du Rhone

Shearson/American Express Inc.
P.O. Box 1211, One Place Longemalle

Smith Barney, Harris Upham & Co. Incorporated
6-8 Rue de Candolle

Stralem & Company Incorporated
6, Ave. de Frontenex

Lausanne

Dean Witter Reynolds Inc.
10 Ave. de la Gare

Dominick & Dominick Incorporated
Rue St. Martin 7

Droulia & Co.
2 Place St. Francois

Shearson/American Express Inc.
2 Place Pepinet

Lugano

Hutton (E.F.) & Company Inc.
9 Via S. Balestra

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Via Balestra 27, 6900
(Merrill Lynch, Pierce, Fenner & Smith, S.A.)

Prudential-Bache Securities, Inc.
Via Pioda 9

Shearson/American Express Inc.
Viali Ste Fani Franscini 22

Thomson McKinnon Securities Inc.
Via Cantonale-16

Tucker, Anthony & R.L. Day, Inc.
Piazza Monte Ceneri 9

Zurich

Brown Brothers Harriman & Co.
Stockerstrasse 38
(Brown Brothers Harriman Services AG)

Donaldson, Lufkin & Jenrette Securities Corporation
Beethovenstrasse 5, 1st Floor

Drexel Burnham Lambert Incorporated
Limmat quai 112

Hutton (E.F.) & Company Inc.
Kuttelgasse 4

Lawrence (Cyrus J.) Incorported
Bleicherwig 7, 8002

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Muehlenbachstrasse 25

Prudential-Bache Securities, Inc.
Bahnhofstrasse 106

Smith Barney, Harris Upham & Co. Incorporated
Gartenstrasse 25

URUGUAY

Montevideo

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Rincon 454, Piso 5

Prudential-Bache Securities, Inc.
Calle Buenos Aires 585-BIS

U.S. VIRGIN ISLANDS

St. Croix

Merrill Lynch, Pierce, Fenner & Smith Incorporated
55 Company St., The Mahogany Inn

Prudential-Bache Securities, Inc.
14 Church St.

Appendix E

St. Thomas

Prudential-Bache Securities, Inc.
9 Norre Gade, Charlotte Amailie

VENEZUELA

Caracas

Fahnestock & Co.
Edificio Seguras Venezuela, Avenida Francisco DeMiranda, 2nd Fl., Apartado 3089

Merrill Lynch, Pierce, Fenner & Smith Incorporated
Venezolana S.R.L. Apartado 5136
(Merrill Lynch, Pierce, Fenner & Smith Venezolana S.R.L.)